IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

Crl.Rev.Pet.No. 320 of 2000()

CRA.138/1996 of II ADDL.SESSIONS COURT, KOLLAM
CC.682/1990 of JUDL.MAGISTRATE OF FIRST CLASS, KARUNAGAPPALLY
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REVN. PETITIONER/APPELLANT/ACCUSED:
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1. **RAGHAVAN BABU, KAROORTHEKKETHIL, PUNNAKULAM MURI, ADINAD VILLAGE, KARUNAGAPPALLY, KOLLAM.**

2. **RAGHAVAN DIVAKARAN .DO. .DO.**

3. **RAGHAVAN UTHAMAN .DO. .DO.**

BY ADV. SRI.B.MOHANLAL

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY SUB INSPECTOR OF POLICE, KARUNAGAPPALLY IN CRIME NO.99/90 OF KARUNAGAPPALLY POLICE STATION THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON C.M.P.No.1927/2000 IN C.R.R.P.NO.320/2000

DISMISSED.

26/9/2007 Sd/- K.R.UDAYABHANU, JUDGE

TRUE COPY

P.A.TO JUDGE

K.R.UDAYABHANU,J

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Crl.R.P.No.320 of 2000

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Dated this the 26th day of September 2007

ORDER

Revision petitioners who are the accused 1, 3 and 4 in C.C.No.682/1990, were convicted for the offences under Sections 143,147,148, 225(B), 353 read with Section 149 I.P.C and sentenced to undergo simple imprisonment for three months for the offence under Section 143 IPC and simple imprisonment for six months each for the offence under Section 147 IPC. A1 stands convicted for the offence under Section 225(B) IPC and sentenced to undergo simple imprisonment for three months.

2. The prosecution case is that on 28.3.1990 at about 10.45 a.m., CW2 and party arrested the first accused for possessing illicit liquor and when attempted to take A1 in the jeep of the Excise party, A2 to A4 along with 65 unidenfied persons formed themselves into an unlawful assembly with dangerous weapons like stick, chopper, axe, and stones etc. and took away A1 from the custody of excise party by force.

3. The evidence adduced in the matter consisted of the testimony of PWs 1 to 5 and Exts.P1 to P5.

4. PWs 1 to 3 Excise officials constituted the squad that apprehended A1. PW4 Excise Range Inspector forwarded Ext.P1 report of PW1 to the police vide his report ie, Ext.P2 before PW5 Sub Inspector/Investigating Officer. Ext.P4 is the scene mahazar and Ext.P5 is the report as to the identity of the accused submitted by PW5. PWs1 to 3 have testified in support of the prosecution version. Version of PW1 is that on the particular day he along with ten others including PWs 2 and 3 constituting patrol duty when reached near the Kanjikkal Cashew factory, A1 was found in possession of illicit liquor. A1 was arrested at the spot and liquor was taken from his custody and at the time when he was attempting to take A1 to Excise Office in the jeep, A2 to A4 along with 65 others obstructed and took away A1 by force. He did not resist apprehending law and order problems. He submitted Ext.P1 report before PW4 the Excise Inspector. It is seen that at 12 noon itself the crime has been registered vide Ext.P3. Pws.2 and 3 have supported the version of PW1. No

contradictions or omissions were brought out with respect to his previous statement. PW4 has testified that in the case registered against A1 by the Excise Authorities for possessing illicit liquor vide; CC.66/90, A1 pleaded guilty and was fined. PW5 the Sub Inspector has testified as to the investigation conducted and the arrest of the accused. The contention of the counsel for the revision petitioner is that there was no legal arrest and the same is not established by any objective evidence and hence Section 225 will not be attracted as Section 225 only contemplates resistance, rescue etc. of person who is lawfully detained for an offence. I find that the the above contention, has no merits. It is also contented that at the time a temple festival was going on and a number of people had assembled at the spot in order to witness the festival and accused were not at the place at all. I find PWs1 to 3 have identified the accused. In the circumstance, and in view of the concurrent findings of the court below, I find that there is no ground to interfere in the order. The conviction is confirmed.

5. Counsel has pleaded that the revision petitioner belonged to a very poor family and that more than 16 years have elapsed since the commencement of the proceedings. In the circumstances, I find that imprisonment can be avoided. In the circumstances A3 and A4 are sentenced to pay a fine of Rs.5,000/- for the offence under Section 225 IPC and to pay a fine of Rs.5,000/- for the offence under Section 147 IPC. A1 is sentenced to pay a fine of Rs.5,000/- under Section 225(B) IPC. No separate sentence is awarded for the offence under Section 143 IPC. If the fine amounts are not remitted, they shall undergo simple imprisonment for six months each for each of the offences. The revision petitioner is granted two months time from today onwards to remit the fine amount.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU, JUDGE

dvs